A

CHAI MEI LIAN

v.

PP

B

HIGH COURT SABAH & SARAWAK, KUCHING
DAVID WONG DAK WAH JC
[CRIMINAL APPEAL NO: 41-33-2005 III]
5 APRIL 2006

C ***CRIMINAL PROCEDURE:*** *Jurisdiction of court - Magistrate's court - Conviction, appeal against - Jurisdiction of a Court of a Magistrate of the First Class - Courts of Sabah and Sarawak - Subordinate Courts Act 1948, ss. 109, 111 - Customs Act 1967, s. 135(1)(d)*

D ***STATUTORY INTERPRETATION:*** *Construction of statute - Literal approach - Plain meaning of words of statute - Whether words clear and unambiguous*

After a full trial in a court of a Magistrate of the First Class, the appellant was convicted for an offence under s. 135(1)(d) Customs E Act 1967 ('CA') for being in possession of unaccustomed goods on which customs duties had not been paid and ordered to pay a fine of RM10,000 in default of five months imprisonment ('said conviction'). The appellant, being dissatisfied with the said conviction, appealed to this court and the sole issue that arose for F determination before this court was whether or not a court of a Magistrate of the First Class had the jurisdiction to hear offences under s. 135(1)(d) CA in view of s. 111 Subordinate Courts Act 1948 ('SCA').

G **Held (allowing the appeal):**

(1) In construing any statute, the first task is to look at the words in the legislation and apply the plain meaning of the words in the statute and if there is no ambiguity to the words used, H the court is duty bound to accept it even if it may lead to mischief. The court's duty is not to legislate, that duty lies with Parliament. If however the words are not clear, then the courts may adopt the purposive approach in construing the meaning of the words used. (para 21)

I **(2)** For s. 111 SCA to kick in, the legislation, in this case the CA, must be a legislation which was in force in Sabah prior to 1 June 1981. The CA has been in existence prior to 1 June

1981 and it provides that where there is a reference to a court of a Magistrate of the First Class in Sabah and Sarawak, it shall be substituted with the Sessions Court. (para 22)

(3) The words in s. 111 SCA are clear and unambiguous. As there is no ambiguity, there is no reason to adopt the purposive approach. (para 24)

(4) Section 109 SCA clearly provides that it is the dominant statute and that it prevails over other statutes and in the instant appeal over the CA. As such, the court of a Magistrate of the First Class which heard the charge preferred against the appellant had no jurisdiction to hear it and hence the trial is a nullity. The said conviction was set aside and the fine paid to be refunded to the appellant. (paras 24 & 25).

[Case remitted to Sessions Court for trial.]

Case(s) referred to:
A Juvenile v. PP [2003] 1 CLJ 171 HC ***(refd)***
PP v. Dato' Yap Peng [1987] 1 CLJ 550; [1987] CLJ (Rep) 284 SC ***(refd)***
PP v. Tan Tatt Eek & Other Appeals [2005] 1 CLJ 713 CA ***(refd)***
Shim Tshun Fatt v. PP [2001] 1 CLJ 154 HC ***(refd)***
Warburton v. Loveland [1832] 2 D & C1 (HL) 480 ***(refd)***
Woodward v. Watts [1853] 2 E&B 452 ***(refd)***

Legislation referred to:
Customs Act 1967, ss. 118, 135(1)(d), (i)
Immigration Act 1959/63, s. 58(1)(b)
Juvenile Courts Act 1947, s. 4
Subordinate Courts Act 1948, ss. 61, 80, 85, 109, 111

For the appellant - John Shek Kwok Bun; M/s John Shek, Sigar, Wee Yee & Co
For the respondent - Yong Leou Shin DPP

Reported by Sharmini Pillai

JUDGMENT

David Wong Dak Wah JC:

Appeal

[1] This is an appeal from the appellant against his conviction after a full trial in a court of a Magistrate of the First Class on 27 November 2005. The conviction was in respect of offence

under 135(1)(d) of the Customs Act 1967 in which he was ordered to pay a fine of RM10,000 in default five months imprisonment.

The Charge

[2] The charge preferred against the appellant reads:

[3] That you Chai Mei Lian at about 11.15am on 2 April 1993 at Sin Khit Miaw, No 196, Tapah Village, 22nd Mile Kuching, Sarawak were knowingly concerned in possession of unaccustomed goods to wit 41 cts x 20 pkts x 10 sticks Dajarum Filter Deluxe Cigarettes (11.89 kgs) on which Customs Duties leviable by law amounting to RM1,926.18 had not been proved to have been paid and thereby committed an offence under s. 135(1)(d) of the Customs Act 1967 and punishable under s. 135(1)(i) of the same.

Jurisdiction Issue

[4] When this appeal came before me on 12 December 2005, I referred to the learned DPP, Miss Yong Leou Shin and Mr. John Shek, learned counsel for the appellant two cases, namely, *Shim Tshun Fatt v. PP* [2001] 1 CLJ 154 (Shim) and *A Juvenile v. PP* [2003] 1 CLJ 171 (A Juvenile) and requested them to submit on the question whether or not a court of a Magistrate of the first class has the jurisdiction to hear offences under the s. 135(1)(d) of the Customs Act 1967 in view of s. 111 of the Subordinate Courts Act (s. 111). Though this point was not raised in the petition of appeal, I found it fit that this issue needed to be addressed as it concerned a matter of jurisdiction. It is of course established law that when the court is aware of the fact that the jurisdiction of court may be an issue even at the appellate stage, the court is under a duty to address that issue as jurisdiction cannot be waived.

Cases

[5] The jurisdiction issue basically requires me to determine which learned judge's interpretation of s. 111 in the aforesaid two cases is to be preferred.

Shim's Case

[6] That case concerns s. 58(1)(b) of the Immigration Act which reads as follows:

58. Trial of offences

(1) All offences against this Act shall be cognizable:

(a) in West Malaysia, by a Sessions Court and by a Court of a First Class Magistrate; and

(b) in East Malaysia, by a Court of a First Class Magistrate.

(2) No prosecution shall be instituted in respect of any offence against this Act without the sanction in writing of the Director General or of the Public Prosecutor or his Deputy:

Provided that nothing herein shall prevent any police officer or immigration officer from exercising his powers to arrest or detain any person under this Act.

(3) In West Malaysia any Sessions Court or Court of a First Class Magistrate and in East Malaysia any Court of a First Class Magistrate may notwithstanding anything in the Subordinate Courts Act 1948, the Sabah Criminal Procedure Code or the Sarawak Criminal Procedure Code as the case may be, impose the full punishment prescribed for any offence except that the Court of a Magistrate other than a Stipendiary Magistrate in East Malaysia shall not impose a sentence of imprisonment for a term exceeding twelve month.

Section 56(1)(d) of the Immigration Act provides:

56. Offences

(1) Any person who:

(a) (Repealed);

(b) (Repealed); 10

(c) (Repealed);

(d) harbours any person whom he knows or has reasonable grounds for believing to have acted in contravention of this Act;

[7] It was contended by the appellant there that in view of s. 111, only Sessions Courts in so far as Sabah and Sarawak are concerned have the jurisdiction to hear immigration cases.

Section 111 states:

> Where in any written law passed or made before the commencement of the extension of this Act to Sabah and Sarawak, there is, in relation to Sabah or Sarawak:
>
> (a) a reference to the Court of a Magistrate of the First Class or a District Court there shall be substituted a reference to a Sessions Court;
>
> (b) a reference to the Court of:
>
> (i) a Magistrate of the Second Class, a Police Court or Court of Small Causes;
>
> (ii) a Magistrate of the Third Class or a Petty Court, there shall be substituted a reference to a Magistrates' Court;
>
> (c) a reference to a Stipendiary Magistrate or a Magistrate of the First Class there shall be substituted a reference to a Sessions Court Judge; and
>
> (d) a reference to a Magistrate of the Second Class or a Magistrate of the Third Class there shall be substituted a reference to a Second Class Magistrate.

[8] And as the Subordinate Courts Act 1948 was extended to Sabah on 1 June 1981 and since the Immigration Act is a legislation in existence prior to 1 June 1981, s. 111 came into play and conferred exclusive jurisdiction to the Sessions Courts as far as the Immigration Act is concerned. That contention was upheld by Richard Malanjum J (as he then was) and this is what he said:

> On plain or literal reading of s. 58(1)(b) in the context of s. 111 it is clear that it is the intention of the legislature to substitute the court which should have jurisdiction to hear offences under the said Act. I cannot envisage any other purpose in legislating s. 111 other than the foregoing preposition. However such effect is only on those statutes that are already in force in Sabah prior to 1 June 1981 ...
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> ... As regards the submission that for s. 111 to override the jurisdiction of the court of a magistrate of the First Class, the intention of Parliament should be clear and unambiguous while in the present case it is not so, with respect I am unable to accept such contention. On plain and literal reading of s. 111 it is obvious that the intention therein is to amend or substitute for 'the court of a magistrate of the First Class' with 'a Sessions Court'. Hence, I find no ambiguity in that section."(page 159 of the report)

[9] The learned judge in dealing with the inter relationship between s. 111 and s. 85 of the Subordinate Courts Act 1948 said:

> ... It is also a canon of statutory construction that a statute should be read as a whole. Each clause in a statute is to be 'construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute' per Lord Davey in *Canada Sugar Refining Co. Ltd v. R* [1898] AC 735 at p. 741. (See also: *Madanlal Fakirchand Dudhediya v. Shree Changdeo Sugar Mills Ltd & Ors* [1962] AIR SC 1543).
>
> As such I do not think s. 85 of the 1948 Act can be interpreted as to give a court of a magistrate of First Class the jurisdiction to hear cases under the said Act without due regard to the provision of s. 111 thereof. Indeed I note that s. 111 comes under the subheading of an amending section. And in fact that section is not so much involved on any other question such as the power of sentencing as s. 85 may have been intended; rather it is intended as an amending section thereby substituting the phrase, *inter alia*, 'a Court of a First Class Magistrate' with the phrase 'a Sessions Court' in any statute that has been in force in Sabah prior to 1 June 1981.
>
> Section 85 is also preceded by the phrase 'Subject to limitations contained in this Act' thereby indicating that it is not a section to stand on its own. Of course it is also possible to say that the word 'limitations' thereto only deals with the power of sentencing and such other limitations contained in the 1948 Act before the insertion of s. 111 thereof. But to do that would tantamount to isolating or limiting the latter section for a specific purpose. I do not think that is in line with the rule of statutory construction. In any event that would have been spelt out in the first instance. Accordingly I would think that s. 111 is also a limitation to s. 85" (page 160 of the report)

A Juvenile's Case

[10] The legislation in question there was the Juvenile Courts Act 1947. The issue was whether or not s. 111 takes away the jurisdiction of a court of Magistrate of the First Class on matters under the Juvenile Courts Act 1947. Section 4 of the Juvenile Courts Act 1947 provides:

4. Constitution, jurisdiction and procedure of Juvenile Court

(1) Courts constituted in accordance with this Act and sitting for the purpose of hearing any charge against a juvenile or for the purpose of exercising any other jurisdiction now or hereafter to be conferred on Juvenile Courts by or under this Act or by any other written law shall be known as Juvenile Courts.

(2) A Juvenile Court shall consist of a Magistrate of the First Class who, in the exercise of his functions as a Juvenile Court, shall be assisted by two advisers chosen from a panel of persons resident in the Federal Territory or the State, as the case may be, nominated by the Minister or the State Authority respectively. One of the two advisers shall, if practicable, be a woman.

[11] Ian HC Chin J's ruling on this issue is neatly summarized in the headnotes of the law report which I for convenience reproduce the same in verbatim:

[1] By virtue of the Subordinate Courts Act (Extension Order) 1980, the Subordinate Courts Act 1948 was modified and extended to Sabah and Sarawak. The order was made pursuant to s. 74 of the Malaysia Act 1963. By virtue of s. 74(2) and 74(3) thereof no such order shall modify any state law. It followed that s. 111 of the Subordinate Courts Act 1948 ought not to be construed in isolation. It must take into account the limitation imposed by s. 74 of the Malaysia Act 1963 under which the modification was made. Therefore, "written law" in s. 111 of the Subordinate Courts Act 1948 cannot apply to any state law since state law cannot be changed, modified or altered by virtue of s. 74 thereof. (pp 177 b, 179 c & 186 b)

[1a] In its application to Federal law, the term "written law" in s. 111 of the Subordinate Courts Act 1948 must be confined to those federal laws that specifically mentioned and made provisions "in relation to Sabah and Sarawak" which could be interpreted to mean also "East Malaysia". It followed that as the Juvenile Courts Act 1947 did not contain any specific reference to Sabah and Sarawak or to East Malaysia, the magistrate had the necessary jurisdiction under the Act and was the proper officer to preside over the juvenile court. The decision of *Shim Tshun Fatt v. PP* was only correct in its application to the Immigration Act 1959/63 as s. 58(1)(b) of the same Act made a specific reference to Sabah or Sarawak by using the term "East Malaysia". Further, the term "Stipendiary Magistrate" was used in that section and

such a term could only be used when reference was made in relation to Sabah and Sarawak where such officers existed and not in West Malaysia. (p 186 c-f) 15

[12] The route which the learned judge took in coming to his decision was a nostalgic one where his Lordship set out the historical legal framework of Sabah Subordinate courts. This historical background is set out in pp. 175-185 of the law report. At p. 185 of the report he concluded as follows:

Going back to s. 111, one reason for such a provision is probably due to the fact that before 1 June 1980 Sabah had Stipendiary Magistrates and magistrates of the different classes and magistrates court of the first class, second class and third class. Federal and State law passed before 1 June 1980 contain references to such officers and courts. Therefore, the reason for enacting s. 111 is to resolve the anomaly of the pre-1 June 1980 Federal law and State law continuing, after that period, to refer to those officers and offices when they no longer exist after the coming into force of the Subordinate Courts Act 1948. It will be recalled that under that Act, the only Subordinate Courts that are established are Sessions Courts and magistrates' courts (and additionally in West Malaysia, Penghulu's Courts) though magistrate of the second class may preside in a magistrates court with the limited jurisdiction spelt out in ss. 88 and 89. Therefore, there was a need to substitute such reference. However, the plain reading of s. 111 may justify the conclusion that for Sabah and Sarawak only a Sessions Court judge is better able to handle matter which hitherto was within the competence (as it is now in West Malaysia) of magistrates of the first class. Unfortunately, though it is inconceivable that was intended, such a result does obtain if one does not resort to the purposive interpretation of s. 111. It also created the mischief of giving powers in the one breadth under ss. 61, 80 and 85 and taking them away at the next through s. 111. To avoid these problems, s. 111, ought not to be construed in isolation and it must also take into account the limitation imposed by s. 74 of the Malaysia Act under which the modification was made. If read in isolation, it would mean that in every written law that existed before 1 June 1981 (the date the Subordinate Courts Act 1948 was extended to Sabah and Sarawak) reference to a court of magistrate of the first class in relation to Sabah and Sarawak is to be substituted with a reference to a Sessions Court and reference to a magistrate court of a class lower than first class is to be substituted with a reference to a magistrate court. The officers referred there are also to be substituted, with a President of the Sessions Court substituting for a Stipendiary Magistrate or a magistrate of a first class. Such a

wide interpretation would result in magistrates of the first class having nothing to do since most of their duties would have to be taken over by the Sessions Court judges.

That wide interpretation has to be narrowed down. Firstly, "written law" there cannot apply to any State law for the reasons I have given, *supra*, when I considered s. 74 of the Malaysia Act, since State law cannot be changed or modified or altered when resorting to s. 74. Therefore, when a State law states "magistrate of the first class" or "magistrate court of the first class", those descriptions are unaffected by s. 111 and those courts continue to have jurisdiction which otherwise s. 111 would have the effect of removing it and giving it to the Sessions Court. Thus, "written law" must be confined to Federal law in existence on 1 June 1981 except where the State law refers to a magistrate of the second class or of the third class and the magistrate courts of such class where then those references have to be replaced by magistrates of the first class and magistrates courts.

Secondly, even in its application to Federal law, the term must be confined to those Federal laws that specifically mentioned and made provisions in "relation to Sabah or Sarawak" which can be interpreted to mean also "East Malaysia". Section 58(1)(b) of the Immigration Act appears to be such a Federal law as it made specific reference to Sabah or Sarawak by using the term "East Malaysia". It will be noted that the term "Stipendiary Magistrate" was used in that section and such a term could only have been used when reference was made in relation to Sabah and Sarawak where such officers existed and not in West Malaysia. Hence, I am in respectful agreement with the decision in *Shim Tshun Fatt v. PP* but only in its application to the Immigration Act. Having said that, what remains to be examined is whether other Federal law have a provision similar to that of s. 58(1)(b) of the Immigration Act.

Of immediate concern is the Customs Act and the Poisons Act because consequent upon the decision of *Shim Tshun Fatt v. PP* and though that case concerns the interpretation of the Immigration Act, a directive was issued to have offences under the Customs Act and under the Poisons Act tried only by the Sessions Courts. The Customs Act does not have provision even remotely resembling s. 58(1)(b) of the Immigration Act.

There is no specific reference to Sabah and Sarawak or to East Malaysia. Therefore, I am of the view that s. 111 does not affect at all the operation of the Customs Act and the jurisdiction conferred there upon the magistrates court of the first class to try offences under that Act.

> As for the Poisons Act, s. 33 made reference to Sabah and Sarawak and provide only for the Sessions Court to have jurisdiction to try offences under that Act. So the Sessions Courts shall continue to hear offences under the Poisons Act.
>
> As for the argument that magistrates of the first class have no jurisdiction under the Juvenile Courts Act in view of s. 111 of the Subordinate Courts Act 1948, it depends, as mentioned earlier, on whether that Act contains any specific reference to Sabah and Sarawak or to East Malaysia and there is none, which means that a magistrate of the first class has jurisdiction to deal with matters under that Act and is the proper officer to preside over a Juvenile Court.

[13] Let me say here that the historical background which the learned judge set out in respect of Sabah subordinate courts is the same as in Sarawak. In fact when Datuk Raymond Wong Tung Cheun was appointed as a Sessions Court Judge on 1 June 1981, there were four other appointees, namely, the present Chief Judge of Sabah and Sarawak, Tan Sri Steve Shim Lip Kiong, Agnes Wong Kiew Ling, Chiu Yuk Ching, and Joseph Wong Kin Teck.

[14] From the judgment in *A Juvenile,* I observed the followings:

1. The learned judge had applied a purposive interpretation approach to the construction of s. 111 nothwithstanding the fact that the wordings in s. 111 were unambiguous. He took this approach, *inter alia*, on the ground that the natural meaning would create a mischief of giving power in the one breath under ss. 61, 80 and 85 and taking away through s. 111 of the Subordinate Courts Act.

2. There was a directive issued in Sabah after the *Shim*'s case directing that offences under the Customs Act and Poison Acts are to be heard by the Sessions Courts. That circular had been overtaken by a letter by the Deputy Registrar Sabah dated 9 September 2002 informing the subordinate courts of the decision of *A Juvenile*.

The Relevant Statute In This Case

[15] Section 118 of the Customs Act 1967 was amended in 1 July 1978 and reads as follows:

> Notwithstanding the provisions of any written law to the contrary, a court of a Magistrate of the First Class shall have jurisdiction to try any offence under this Act and to award the full punishment for any such offence.

[16] Here it should be noted that prior to 1 July 1978 s. 118 of the Customs Act 1967 was as follows:

> Notwithstanding the provisions of any written law to the contrary, a Sessions Court in the States of Malaya or a court of a Magistrate of the First Class of Sabah and Sarawak shall have jurisdiction to try any offence under this Act and to award the full punishment for such offence.

Principles On Construing Statutes

[17] How I will determine the issue at hand in my view is governed by the established principles on construction of statutes.

[18] I start off and cannot do better than to refer to the recent Federal Court decision in the case of *PP v. Tan Tatt Eek & Other Appeals* [2005] 1 CLJ 713 where Ahmad Fairuz CJ at pp. 733-734 said this:

> Pada pendapat saya pendekatan mahkamah ini di dalam memakai kaedah pentafsiran literal itu adalah tepat. Di dalam kes *Megat Najmuddin bin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra (M) Bhd* [2002] 1 CLJ 645 di ms 420 saya telah menyatakan persetujuan saya dengan keputusan Mahkamah Agung di India di dalam kes *Hiralal Ratan Lal v. The Sales Tax Officer, section III, Kanpur* AIR [1973] SC 1034 di mana dinyatakan:
>
> In construing a statutory provision, the first and foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? *If the provision is unambiguous and if from that provision the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intent is not clear.* (emphasis added)
>
> Di dalam kes *Chin Choy & Ors v. Collector of Stamp Duties* [1979] 1 MLJ69, mahkamah ini menyatakan di ms 70:
>
> It may be apposite at this stage to recall certain basic principles in the interpretation of statutes. Applying the words and phrases of a statute in the ordinary meaning has been said to be the first and most elementary rule of construction and the second is said to be to construe the phrases and sentences according to the rules of grammar.
>
> Willan CJ di dalam kes *Yeo Peck Chie v. KS Gill & Co* [1946] MLJ 131 di ms 133 pula menyatakan:

In interpreting a provision of a statute, one of the cardinal rules is to adhere as closely as possible to the literal meaning of the words. If an authority is required for this, it is to be found in the case of *Abbott v. Middleton* [1858] 7HL Cas 114. Once the literal meaning has been established then, however unjust, arbitrary or inconvenient such meaning may be, it must receive its full effect – see *Biffin v. Yorke* 5 Man & G 428. Nor is it the function of the court to scan the wisdom or policy of a statute – see *May v. The Great Western Railway Co* 41 LJQB 104.

... Mengenai hasrat Parlimen yang dikatakan mahu menjadikan pemakaian s. 37(da) secara otomatik berikutan pemakaian s. 37(d) saya bersetuju dengan pernyataan penulis di dalam *N.S. Bindra*'s Interpretation of Statutes Ninth Edition di ms 343 bahawa:

The question for the court is not what the legislature meant, but what the language means, ie, what the Act has said that it meant. The courts must give first precedence to the plain meaning of the language used in the statute and, if the meaning is clear and quite unambiguous, that meaning must be accepted by the courts irrespective of other considerations even though the purpose of the legislature might be defeated by that interpretation. In truth when the meaning of the words is plain, it is not the duty of the courts to busy themselves with supposed intentions. In such cases the words themselves declare the intention of the legislature.

Steve Shim CJ (Sabah & Sarawak) in the same case at pages 746-747 stated the same principles:

At the outset, let me say that I have taken the opportunity of reading and rereading the judgment of the Federal Court in *Muhammed Hassan v. PP*. It is a lengthy and exhaustive judgment. On a thorough perusal of *Muhammed Hassan v. PP*, it seems clear to me that the one significant feature which underpins the whole decision is the need for consistency, clarity and predictability in construing the provisions of s. 37(d) and (da) of the Act in the light of the clear and unequivocal words used therein. Without indulging in rhetorics it is, I think, simple enough to examine them along well recognized principles of construction of statutes. That is precisely what the Federal Court in *Muhammed Hassan v. PP* has done. Therein, the Federal Court said this:

The wordings in ss. (d) and (da) of s. 37 are clear and unequivocal. That being so, their meanings must be determined from the language employed and the two subsections must be taken to mean exactly what they respectively say ... Since the literal meanings of the two subsections are intelligible, they must

not be extended on the ground that there has been a slip or a matter not provided for which should have been provided for. Any ambiguity or slip would be a matter for the Legislature.

The court then cited with approval the observation by Lord Simonds in *Magor & St. Mellons Rural District Council v. Newport Corporation* [1952] AC 189 HL wherein he said that the duty of the court was to interpret the words of a statute that the legislature had used. It is of course trite law that if the intention of the legislature is expressed in words which are clear and explicit, the court must give expression to that intention. As *Bindra's Interepretation Of Statutes*, 8th edn, has stated:

If the intention of the Legislature can be ascertained, all rules of construction must yield to the Legislative intention (*Board of Trustees v. Johan Steele* [1933] SCR (SC) 47). They cannot override the legislative intent specifically expressed in the enactment (*State Of Up v. Jaipal Singh Narsh* [1978] All LI 936). If the intention of the Legislature is clear, that intention constitutes the law.

The primary duty of the court is to give effect to the intention of the legislature in the words used by it. It is a well established canon of interpretation that the intent of the legislature is to be gathered from the words used and that if the words used have not acquired any technical meaning, they should be deemed to have been used in their ordinary meaning. If the words of the statute are in themselves precise and unambiguous, then no more is necessary than to expound those words in their natural and ordinary sense. The words themselves alone in such cases best declare the intent of the law giver. (see *Bindra's Interpretation Of Statutes* – 8th edn).

[19] The English position is the same. In *Woodward v. Watts* [1853] 2 E&B 452, the court said:

The golden rule in the construction of an Act of Parliament is to put on the words of it their natural and grammatical construction although that may lead to some inconvenience, absurdity, or mischief; it being for the judges to construe Acts of Parliament; and not to legislate, and for the legislature to provide a remedy when one is wanted.

[20] In *Warburton v. Loveland* [1832] 2 D. & Cl. (HL) 480, 489 Tindal CJ said:

> Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature.

[21] The common thread of the above cases is this. In construing any statutes, the first task is to look at the words in the legislation and apply the plain meaning of the words in the statute and if there is no ambiguity to the words used, the court is duty bound to accept it even if it may lead to mischief. The rationale is simple. The court's duty is not to legislate, that duty lies with the Parliament. If however the words used are not clear, then the courts may adopt the purposive approach in construing the meaning of the words used.

Findings

[22] I come back to s. 111. For s. 111 to kick in, the legislation, in this case the Customs Act, must be a legislation which was in force in Sabah prior to 1 June 1981. Once that is satisfied and in this case, the Custom Act is an Act in existence prior to 1 June 1981, it provides that for Sabah and Sarawak where there is a reference to the court of a Magistrate of the First Class, it shall be substituted with the Sessions Court. In my view that is the plain meaning to the words used in s. 111.

[23] Miss Yong Leou Shin naturally submitted that I should adopt the judgment of *A Juvenile* while Mr. John Shek said the judgment of *Shim*'s case is the preferred one.

[24] Having read both learned judgments more than a few times, I with regret and utmost respect to the learned judge in *A Juvenile*, adopt the reasoning in the judgment in *Shim*'s case. And I do so for the following reasons:

1. The words in s. 111 are clear and unambiguous. Hence its natural meaning must be used. My interpretation is fortified by the learned judge's interpretation in *Shim*'s case who at p. 160 of the report emphatically said "On plain and literal reading of s. 111 it is obvious that the intention therein is to amend or substitute for 'the court of a magistrate of the first class' with 'a Sessions Court'. Hence, I find no ambiguity in that section … I cannot envisage any other purpose in legislating s. 111 other than the foregoing preposition"

I am fully aware of the fact that the wordings in the s. 118 of the Customs Act are different to s. 58(1) of the Immigration Act. In my view the aforesaid difference in wordings does not have any bearing on the plain and natural meaning of s. 111. This view is consistent to the reason why a circular was issued after the *Shim*'s judgment in late 2000.

2. As there is no ambiguity to s. 111, there is no reason for me to apply the purposive approach. If I were to apply that approach, I will be running foul of the *dicta* expounded in the case of *PP v. Tan Tatt Eek & Other Appeals (supra)* cited above, which are binding on me.

The law in my view is that when the literal interpretation of a statute leads to an absurd and impractical result, then the purposive approach is used. Further and unfortunately there is no explanatory note in the Hansard in connection to s. 111, hence no guidance can be gathered from it.

3. As stated by the late Chong Siew Fai, CJSS in *Muhammed bin Hassan* [1998] 2 CLJ 170 FC the approach to construing a statute "is to ascertain the meaning of the words employed by Parliament rather than the intention of Parliament".

4. As stated earlier s. 118 of Customs Act was amended on 1 July 1978 which is about two and half years before the extension of the Subordinate Court Act. (1 June 1981). That amendment did away with the distinction between West Malaysia and East Malaysia. If the Parliament had intended as what the learned judge said in *A Juvenile*'s case, there would be no necessity to enact s. 111. It would have been easier and cleaner exercise for Parliament to amend all the legislations which have the distinction between West Malaysia and East Malaysia the same way as they did to s. 118 of the Customs Act and not enact s. 111.

5. Section 109 of the Subordinate Courts Act provides that "in the event of inconsistency or conflict between this Act and any other written law in force at the commencement of this Act, the provisions of this Act shall prevail." This provision shows quite clearly that the Subordinate Courts Act is so to say a dominant statute and prevails over other statutes and in the instant appeal, the Customs Act.

[25] In view of my findings, I hold that the court of a Magistrate of the first class which heard the charge preferred against the appellant had no jurisdiction to hear it and hence the trial is a nullity. The conviction and sentence against the appellant is hereby set aside and the fine paid to be refunded to the appellant.

[26] The issue which confronts me is whether or not I should order a retrial of the case in the Sessions Court. In dealing with such an issue the court usually does a balancing act between the public interests and that persons who are guilty of crimes should not escape the net of justice due to technicalities and the interests of the accused. In this case, Mr. John Shek in his submission had requested the case be remitted to the Sessions Court for trial. That being the case and also taking into consideration the public interest, I further order that this case be remitted to the Sessions Court for trial.

[27] Finally as my ruling has a bearing on similar pending and decided cases dealt with by the courts of a Magistrate of the First class, I adopt the manner in which the learned judge in *Shim*'s case treated his judgment and that is to apply the doctrine of prospective overruling as applied in *Public Prosecutor v. Dato' Yap Peng* [1987] 1 CLJ 550; [1987] CLJ (Rep) 284. The effect of which is that cases, affected by s. 111, which had been disposed off will remain as they are. As for cases pending and registered in the courts of a Magistrate of the first class at the time of this ruling, they will have to be reregistered in the appropriate courts and start all over again. However since my decision differs to that of the learned judge in *A Juvenile*, it is up to each individual court of a Magistrate of the first class to decide which decision to follow until there is a decision from higher authority.